IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Suresh Kumar Vs. The Civil Judge (Sr.Div.) Bhadra and Anr.

D.B. SPEICAL APPEAL (W) NO. 145/2007
Under Article 225 of the Constitution of India against the Judgment dated 14.11.2006 passed by the Hon'ble Mr. Justice Bhagwati Prasad in S.B. Civil Writ Petition No. 1726/2006 Suresh Kumar Vs. The Civil Judge (Sr.Div.), Bhadra and Anr.

Date of Judgment :: 04.04.2007

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr.Ajay Vyas for Mr. B.K. Vyas, for the appellant.

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

Heard learned counsel for the appellant.

This appeal is directed against the judgment of the learned Single Judge dated 14.11.2006 directing the learned trial Judge before whom the suit No. 17/2004 was pending to pass a fresh order after application of mind.

The suit for eviction was filed by the respondent raising grounds as available to him under the Rajasthan Premises (Control of Rent

and Eviction) Act, 1950 (for short 'the Act of 1950' hereinafter). The Act of 1950 was repealed during the pendency of the said proceedings. However, continuation of the pending proceedings under the provisions of the repealed Act was saved as if no new Act has came into force. The option was given to the suitor in the pending proceedings whether he wants to continue the proceedings under the old Act or to be governed by new Act. That is to say no dismissal of the proceedings could take place because of repeal of the Act of 1950.

In these circumstances, the learned trial Judge finding the clear mandate against the dismissal of the suit on account of new Act having come into force rejected the amendment application.

Learned Single Judge has passed the following order in the writ petition filed by the defendant :-

> “Heard learned counsel for the parties and examined the case.
>
> In view of the amendment which has subsequently come the observations given by the trial court are not sustainable. The trial court is directed to apply its mind and pass a fresh order.
>
> With these observations the petition stands disposed of.”

Being dissatisfied with the above, the petitioner has filed this appeal

We are of the opinion that the appellant cannot be aggrieved with the order under appeal. The learned trial court in fact after due application of mind under the provisions of the New Rent Control Act had dismissed the application filed by the appellant for amending the pleadings which were not required.

Learned Single Judge has merely stated that the trial Judge has not made any observation about the amendment that has come thereafter under new Act with due application of mind.

We are of the opinion that appellant in terms can not be aggrieved with the order which is eventually passed in his favour.

The appeal is dismissed.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

Rm/-